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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KWANG CHOL JOY,

Defendant and Appellant.

G050733

(Super. Ct. No. 13CF1632)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed.

Marcia R. Clark, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Heather M. Clark, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Kwang Chol Joy of second degree murder (Pen. Code, § 187, subd., (a)) for slaying Maribel Ramos. The trial court sentenced him to 15 years to life in prison. He contends we must reverse because the trial court failed to probe sufficiently whether a juror committed misconduct when she sought prayers from her church community for “guidance or wisdom in her decisionmaking.” The trial court verified the juror did not disclose “what case [she was] on,” had not “discussed it with anybody,” and that nothing “about [her] religious beliefs would interfere with applying the law in this case[.]” The court further ascertained the gist of the juror’s request was ““give me the strength to handle this.”” As we explain, this inquiry was adequate and the court did not err by denying defendant’s request in his new trial motion to unseal the juror’s contact information. We therefore affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

A sobbing Ramos called 911 on the evening of April 21, 2013, because she “fear[ed] the worst” from defendant, who rented a room from her and held unrequited feelings for her. She told the dispatcher that when she rejected his advances that night, he “sounded like he would hurt [her]” and she was “scared for [her] life,” in part because defendant boasted he had a black belt in martial arts. An officer arrived and spoke with defendant, who said he would move out by the end of April.

About 10 days later, on May 2, Ramos alerted a friend, Paul Lopez, by text message that defendant was quarreling with her about his unpaid rent. When Lopez called Ramos, she sounded frightened because defendant was still arguing with her. She put her cell phone on speaker, and Lopez announced he would help “kick him out” the next day if necessary, but Lopez heard only mumbling from the background in response. Before Ramos ended the call, she assured Lopez she would see him the next evening at a softball game. Lopez texted her several times that night, but received no response.

Nor did she return his calls the next day, and when Ramos did not appear at the game, Lopez and others went to check on her, but no one answered their knock at her door, though her lights were on. Her concerned friends called the police, who attempted for hours to locate a working key to gain entry to her apartment, before forcing the door. During that time, they learned defendant had been sitting in his car and watched their arrival and futile efforts, but did nothing. Instead, defendant finally called the police dispatcher to say he did not want to enter the apartment while the police were there. When an officer approached him and asked why he failed to provide assistance, he responded that he thought something was “seriously wrong.” Defendant told Ramos’s cousin he saw her leave with a male, but ignored requests for further details.

Inside the apartment, the officers found no obvious signs of a struggle or a fight. But detectives discovered blood stains on the sleeves of gray, polka dot pajamas someone had folded and placed in Ramos’s closet. Her car was parked at the complex, but her keys, license, coin purse, and cell phone were missing.

Defendant agreed to an interview at the police station that night. He admitted he had been watching Ramos’s apartment with binoculars and “ducked in the back seat” when the police arrived. During the interview, the detectives noticed numerous injuries on defendant’s body, including a large, recently inflicted scratch from his hairline to his right eyebrow. His left arm bore several scratches and puncture wounds, there were scratches on the inside of his right wrist, a scratch on the left side of his neck, and four parallel scratches on his right tricep. Defendant claimed he received the scratches while pulling fishing lines from bushes in a park. According to defendant, the scratch near his eye resulted from a \$12,000 cosmetic procedure he had undergone to appear younger at Ramos’s suggestion; he was 53 and she was 36. Defendant also claimed he paid for Ramos’s groceries and other expenses, but admitted his only source of income was unemployment assistance.

Defendant expressed surprise that he had a scratch across the top of his head and could not explain how he received it. In a subsequent interview, he denied having scratches on his legs, but when the officers pointed to his visible cuts and scratches, he claimed they must have been from a fall.

Defendant admitted he had wanted a romantic relationship with Ramos, which she rejected. He told her he would buy her a car if he received a large settlement in a lawsuit against a former employer. He claimed he and Ramos had designated each other as mutual beneficiaries in their wills.

Defendant admitted he and Ramos had argued on the evening of May 2 because he had overstayed his move-out date. He wanted to stay two more weeks, but refused to pay in advance. Defendant acknowledged Ramos had put Lopez on the speaker phone, and then retreated to her bedroom. The last time he saw her she was wearing gray, polka dot pajamas. He left, returned in an hour to find her gone, and then he left again for a drive because he was “frustrate[d].” When he returned, her bedroom light was on, and one of her larger purses was there, but not her small purse, keys, or cell phone. Defendant claimed Ramos dated frequently and always had “dates lined up,” but he called the police the next morning to report her as a missing person.

Defendant remained a suspect in Ramos’s disappearance, but the police released him pending her return or discovery of her body. Previously, the detectives had seized defendant’s external hard drive, and when he asked for it back, they questioned how he used it since he did not have a computer. He explained he connected it to computers at the public library, where he claimed he tried to assist in finding Ramos over the Internet.

The detectives obtained a search warrant to monitor defendant’s computer and Internet usage at the Orange County Public Library. During a library visit on May 16, 2013, after perusing a Facebook page dedicated to finding Ramos, defendant

typed “how long does it take a human body to decay” into a search engine. He then cleared the search from his Internet browsing history.

Forensic examination revealed defendant then directed his browser to a mapping Web site where he searched for and displayed on his screen the Peter’s Canyon area in Orange County. After switching the map display to a satellite view, he zoomed in on a particular area and a particular tree near Santiago Canyon Road and Jackson Ranch Road, approximately 7.5 miles away from an upcoming “awareness walk” Ramos’s friends planned through Facebook to compare notes about finding her. After zooming in on the map, defendant again cleared his Internet browsing history.

Detectives responded to the area pinpointed by defendant’s Internet search and found Ramos’s body within 45 minutes of their arrival. Her upper body was still concealed by rocks and pebbles, but investigators found that clumps of her hair had been pulled out. When she was discovered, her leg bones protruded from the ground and her feet were missing. A pathologist determined animals had consumed portions of her body, but could not ascertain the cause of her death. Officers arrested defendant the next day, and in searching him they found Ramos’s military identification tags (“dog tags”) in his clothing.

## II

### DISCUSSION

Defendant contends his conviction must be reversed because the trial court failed to make “an adequate inquiry into possible juror misconduct” based on a juror’s admission she had sought prayers from her fellow church members for “guidance or wisdom in her decisionmaking.” We are not persuaded.

It is misconduct for a juror to discuss a case with a nonjuror during a trial. (*People v. Danks* (2004) 32 Cal.4th 269, 304.) In *People v. Hensley* (2014) 59 Cal.4th 788 (*Hensley*), for example, the trial court declined to grant a new trial in a death penalty case after learning a juror consulted his pastor during an overnight break in penalty phase

deliberations. The new trial hearing showed extensive, and potentially misleading, discussions between the pastor and the juror about the “law of the land.” (*Id.* at pp. 820-821.) For instance, the pair reviewed many Biblical passages about the death penalty, including “you live by the sword, you also die by the sword,” which the reverend believed the juror understood as he did: the *law* requires a life for a life. (*Id.* at p. 823.) The Supreme Court reversed, explaining the juror’s deliberations with his pastor constituted prejudicial misconduct, particularly because the pastor in telling the juror he could “go with the law of the land” *or* “with mercy, sympathy, and grace” (*id.* at p. 821, italics omitted) incorrectly implied a governing legal preference for the death penalty. (*Id.* at pp. 826-828.)

A juror’s misconduct during deliberations raises a rebuttable presumption of prejudice. (*People v. Foster* (2010) 50 Cal.4th 1301, 1342.) The presumption is rebutted when ““there is no substantial likelihood that the complaining party suffered actual harm.”” (*Ibid.*) ““The decision whether to investigate the possibility of juror bias, incompetence, or misconduct — like the ultimate decision to retain or discharge a juror — rests within the sound discretion of the trial court.”” (*People v. Virgil* (2011) 51 Cal.4th 1210, 1284 (*Virgil*).)

Similarly, “[t]he specific procedures to follow in investigating an allegation of juror misconduct are generally a matter for the trial court’s discretion.” (*People v. Seaton* (2001) 26 Cal.4th 598, 676.) The court must investigate ““information which, if proven to be true, would constitute “good cause” to doubt a juror’s ability to perform his duties and would justify his removal from the case.”” (*Virgil, supra*, 51 Cal.4th at p. 1284.) But “[n]ot every incident of potential misconduct requires further investigation.” (*Ibid.*)

Here, the record shows nothing similar to the juror misconduct that occurred in *Hensley* and that the trial court adequately investigated the matter. The issue arose when the foreperson sent a note to the trial court on the second day of deliberations

about “a question . . . raised in his head based on what one of the other jurors said.” The court advised the attorneys it would call in and question the foreperson, “[b]ut, beyond that, we’ll see where we go.” The court specified it would “ask the questions” of jurors. Neither counsel suggested to the court any potential questions or lines of inquiry, and the court did not solicit questions from the attorneys. The court brought in the foreperson, who explained that “[r]eligion was brought into the conversation,” and when the court inquired further, elaborated as follows: “She has her church praying on the matter. So I stopped a second and I said, ‘[H]ave you discussed this case outside of this room?’ She said no. She said she was asking for guidance or wisdom in her decisionmaking. Nothing specific was mentioned. And I asked her if she was basing her decisionmaking process on evidence or prayer and she said both.”

The court thanked and excused the foreperson, and called in the juror to discuss whether she had “asked for guidance or something or prayer.” When the juror answered affirmatively, the court asked an open-ended question, “What happened actually?” The following colloquy occurred: “[Juror:] I go to Calvary Chapel West Grove. I knew this was a very heavy thing for me and my beliefs. Not that I couldn’t perform, but that if I could have prayer for it. I never discussed anything personal about the issues, just — only if they would pray for wisdom.” [¶] [Court:] You didn’t — did you tell what case you were on? [¶] [Juror:] No, absolutely not. [¶] [Court:] Nothing about the case at all? [¶] [Juror:] No. [¶] [Court:] Just ‘give me the strength to handle this,’ is that pretty much it? [¶] [Juror:] Uh-huh, and wisdom and guidance, not just for us, the attorneys as well as the jurors and for everybody involved and for you. That was it. [¶] [Court:] Do you think that anything about your religious beliefs would interfere with applying the law in this case? [¶] [Juror:] No, I do not. [¶] [Court:] You haven’t discussed it with anybody? [¶] [Juror:] No, absolutely not.”

The trial court observed, “[I]n my estimation, no harm, no foul, so carry on.” Defense counsel made no motion to strike the juror before or after she left the

courtroom to rejoin the jury. After a brief recess, before and after which counsel entered no objection, the jury resumed deliberations for an hour until the jury sent another note, which the court and counsel discussed and resolved, again without any suggestion the juror earlier committed misconduct. The jury deliberated into the next morning, acquitted defendant of first degree murder, and returned a second degree murder verdict.

Defendant made no motion to excuse the juror for misconduct, and the Attorney General argues his failure to object that the trial court's inquiry was deficient forfeits his appellate challenge. (See *People v. Russell* (2010) 50 Cal.4th 1228, 1250 [failure to object implies tacit approval of trial court's handling of alleged misconduct].) According to defendant, he had no opportunity to object because the trial court set the terms for the juror interview without input from counsel and without giving counsel the chance to argue for additional questioning. But "no decision has suggested *counsel* must be allowed to examine witnesses on the misconduct issue." (*People v. Keenan* (1988) 46 Cal.3d 478, 538.) And the fact that the court asked the foreperson and juror questions is not tantamount to declaring counsel could pose no objections nor offer suggestions to the court for further inquiry. The court may have permitted counsel to question the juror had the request been made, or counsel could have submitted questions for the court to ask the juror, but failed to pursue this course. In any event, even assuming *arguendo* counsel had objected to the adequacy of the court's inquiry, there is no merit to defendant's claims on appeal.

Defendant argues the trial court's inquiry was only "superficial" and inadequate because the court asked leading questions and did not press the juror "to repeat exactly what she said to the church members" or "precisely what she told them to explain *why* she needed the support of prayer." Defendant insists when the foreman suggested the juror "relied on *both* prayer and the evidence" that "was a red flag" for the trial court to ascertain "what that prayer entailed" in case it "may have conflicted with or outweighed the importance of the jury instructions or the evidence." Defendant suggests



that in accepting the juror's denials she discussed the case with fellow church members or that her beliefs might interfere with applying the law, the court allowed her "to evaluate on [her] own whether an impropriety has occurred." Defendant correctly notes that "[j]urors, of course, do not always know what constitutes misconduct." (*People v. Engelman* (2002) 28 Cal.4th 436, 446.)

The record does not bear out defendant's claims the trial court's inquiry was only cursory or otherwise insufficient or that it abdicated the issue of alleged misconduct to the juror's self-assessment. Contrary to defendant's characterization, the trial court asked open-ended questions of both the foreperson and the juror to determine what happened. The court told the foreperson it "need[ed] to hear" what the juror said about religion, and let the foreperson elaborate. Similarly, the court asked the juror "[w]hat happened actually," allowed the juror to respond fully, and followed up with direct questions that the juror answered unequivocally, e.g., "Did you tell what case you were on," to which the juror responded, "No, absolutely not." The court did not let the matter rest with bare denials, but probed further: "Nothing about the case at all?" "You haven't discussed it with anybody?" While defendant now complains those queries were leading questions, that is not the full story because, as noted, they followed the court's initial open-ended inquiries. The court appropriately posed these follow-up questions to ensure full and truthful responses. We discern no abuse of discretion.

Defendant notes in *Henley* that the Supreme Court placed some significance on the fact the juror approached his pastor, but that simply illustrated the manner in which the juror gathered information outside the courtroom, and therefore committed misconduct. (*Henley, supra*, 59 Cal.4th at pp. 825-826.) While the juror here approached her congregation, the trial court's inquiry established she did not receive evidence outside the record or information that might compromise her ability to decide the case fairly. Indeed, she did not even name the case or discuss it with anyone. Defendant notes as in *Henley* that a juror may receive improper outside information about

governing legal principles, even when particular case facts are not discussed. But the court's thorough follow-up with the juror to ascertain she discussed "[n]othing about the case *at all*" (italics added) renders defendant's insinuations merely speculative and insubstantial.

Additionally, the court did not leave the matter for the juror to decide for herself that she did not commit misconduct simply because she stated her beliefs would not interfere with her ability to apply the law. Rather, the court determined that because she had not discussed the case in any manner with her congregation, except a general request for community support "for everybody involved," she did not engage in deliberations outside the courtroom and did not commit misconduct. The court did not err.

Defendant's related claim that the trial court erred by denying his request in his new trial motion to release the juror's contact information is similarly without merit. We review an order denying a request for juror identities for abuse of discretion. (*People v. Jones* (1998) 17 Cal.4th 279, 317.) We must uphold the trial court's ruling unless it was arbitrary or capricious. (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1097.) Defendant based his request on the same assertions underlying his appellate challenge to the trial court's inquiry, namely: the juror allegedly committed misconduct by seeking spiritual aid from her congregation, defendant was denied the opportunity to ask questions to establish the juror committed misconduct, and the trial court's inquiry was insufficient. As discussed, these claims are without merit, and the trial court therefore did not err in denying defendant's motion.

III  
DISPOSITION

The judgment is affirmed.

ARONSON, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.